

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 197 of 1999

in

SPECIAL CIVIL APPLICATION No 627 of 1999

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT AGRICULTURAL UNIVERSITY

Versus

BHIKHABHAI HIRABHAI PATEL AND GUARDIAN & BEST FRIEND OF

Appearance:

MR SA DESAI for Appellant

MR UDAY R BHATT for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 03/03/99

ORAL JUDGEMENT: (Per C.K. Thakkar, Acting C.J.)

Admitted. Mr.Uday Bhatt appears and waives
service of notice of admission on behalf of the

respondent. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against the interim order passed by the learned single Judge on February 12, 1999 in Special Civil Application No.627 of 1999. By the said order, the learned Single Judge directed the Appellants to give admission to the son of the respondent (original petitioner) forthwith in the course of B.Sc. Veterinary Science and Animal Husbandry against the seat, which was lying vacant in pursuance of the order dated 29th January, 1999 passed by the learned Single Judge. Further direction was also issued by the learned Single Judge to the University to produce the complete list of candidates, who have been given admission to the said course within a period of one week from the date of the order. The appellants were also directed to bring the relevant record of the last 50 candidates, who were given admission in the said course.

The respondent, who was the original petitioner, filed the above petition for an appropriate writ, direction or order, directing the appellant-University to grant admission to his son Anilkumar Bhikhabhai Patel to Bachelor of Veterinary Science and Animal Husbandry Course of the tenure of five years in the approved college of Dantiwada, District Banaskantha. It was the case of the petitioner that he was a farmer and his son, who was a minor, wanted to get admission to the above course. He filled in necessary admission form and in accordance with the Rules and Regulations of the University, his son was entitled to get admission in the above course. Unfortunately, however, admission was not given to his son on the ground that he did not submit marksheet of Xth and XIth Standard examinations. According to the petitioner, it was not necessary to submit the said marksheet at the time when the forms were submitted and they can be shown at the time of interview. Since the admission was not given only on that ground, he approached this Court.

The learned Single Judge initially issued notice and on 29th of January, 1999, passed an order, directing the University to keep one seat vacant. On 12th of February, 1999, after hearing the parties, the learned Single Judge held that the learned counsel for the University was unable to satisfy the Court for what purpose marksheet of Xth and XIth standard examinations were required to be annexed with the application form. In the opinion of the learned Single Judge, what was relevant and material was marksheet of XIIth standard

examination, on the basis of which admission was to be given and hence, by insisting upon submission of marksheet of Xth and XIth standard examinations, the University has committed an error. The action was, thus, in the opinion of the learned Single Judge, prima facie, arbitrary and unreasonable and hence, order was passed, directing the University to give admission to the petitioner's son forthwith.

It was submitted on behalf of the University that in case of about 46 such candidates, forms were rejected only on the ground that they had also not submitted marksheet of Xth and XIth standard examinations. The learned single Judge, in view of the fact that it could not be said to be a necessary requirement, instead of disposing of the main matter, kept the petition pending and direction was issued to submit the relevant record of last 50 candidates, who were given admission in the above course. It is this order, which is challenged by filing the present Letters Patent Appeal.

We have heard Mr.S.A. Desai, learned counsel for the appellant-University, and Mr.Bhatt, learned counsel for the respondent-original petitioner.

Mr.Desai submitted that looking to the admission form, it is clear that the marksheet was required to be submitted. Drawing our attention to various clauses of the admission form, he submitted that those marksheet was necessary to satisfy the authorities as to what marks were obtained by the students at Xth and XIth standard examinations and whether the examinations were cleared at the first attempt or by more than one attempt. He also drew our attention to clause 4 of the Instructions for the candidates' personal attention, which ...

:-

"4. Attach only the attested/xeroxed copies of the relevant documents such as Mark Sheets, School Leaving Certificate, Attempt Certificate etc. Original Certificate, Mark Sheet, Documents should not be sent. However original certificate, Mark Sheet, Documents will have to be produced at the time of admission and payment of fees or at the time of interview."

Clause 14 of the Instructions states; "The admission application must be completed in all respects.

Incomplete applications are liable to be rejected." It is not in dispute that the petitioner's son, along with the application form, did not submit marksheet of Xth and XIth Standard examinations. No doubt, a certificate regarding passing of examinations of X and XI at first attempt was submitted, which was issued by the Principal of the School, but, in our opinion, it cannot be said that by insisting on marksheet of Xth and XIth Standard examinations, an illegality can be said to have been committed or the action can be said to be arbitrary or perverse, as observed by the learned Single Judge.

It is no doubt submitted by the learned counsel for the respondent-petitioner that since the son of the petitioner was granted admission pursuant to an interim order passed by the learned Single Judge, his admission to other course was also cancelled and if at this stage, appeal will be allowed and the order passed by the learned Single Judge will be set aside, prejudice will be caused to the petitioner's son, which cannot be compensated in terms of money. He also submitted that, ultimately, the University is a statutory body, looking after the interests of students, and, hence, even if it is assumed that the student had committed some mistake, in the facts and circumstances of the case, when an order is passed, which can be said to be proper and equitable, this Court may not interfere with the same at the instance of the University. It was stated by Mr. Desai, learned counsel for the appellant-University that the interview calls were issued by the University to the candidates, whose applications were found to be in order and no interview call was issued to the son of the respondent. He further submitted that on 31st of December, 1998, the admission process was over. Though the respondent's son was not issued interview letter, he did not approach the Court immediately. In fact, petition was filed in January, 1999 and by that time, the admission process was already over. On 29th January, 1999, an order was passed, directing the University to keep one seat vacant, which was served upon the University on 1st of February, 1999. As by 31st of December, 1998, the admission process was over, the learned Single Judge could not have granted admission.

The learned counsel for the respondent submitted that since there is no requirement of submitting marksheet of Xth and XIth Standard Examinations, when no interview call in respect of B.Sc. Veterinary Science was issued to the son of the respondent, he assumed that, on merits, he was not qualified and eligible, but, subsequently, he approached this Court and filed the petition. In the affidavit-in-reply, it was the

contention of the University that his application form was rejected on the ground that he had not submitted marksheet of Xth and XIth Standard examinations.

As stated above, in our opinion, the stand of the University that such marksheet was required cannot be said to be contrary to law. In fact, in similar circumstances, applications of 46 candidates came to be rejected, which is reflected in the affidavit-in-reply also. Hence, the action of the appellant-University in not considering the application of the respondent's son can be said to be in accordance with law and the order passed by the learned Single Judge deserves to be set aside.

The learned counsel for the respondent further submitted that another student, who is less meritorious and who had obtained less marks, was given admission. In view of the fact, however, that the application form of the respondent's son was not in accordance with law and since that application form was rejected, like other 46 students, the fact that another student, who was less meritorious, was given admission cannot help the respondent.

The learned counsel for the appellant-University submitted that if the respondent applies for refund of the fees, it will be given to him.

For the foregoing reasons, in our opinion, Letters Patent Appeal deserves to be allowed and is accordingly allowed. In the facts and circumstances of the case, no order as to costs.

(apj)